IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.208 OF 2005

IN

SUIT NO.1444 OF 2001

...

M/s.V.P. Constructions & Anr. ...Plaintiffs

v/s.

M/s.Khandelwal Laboratories Ltd.

and Anr. ...Defendants

...

Mr.C.K.Thomas for the Plaintiffs.

Mr.Manoj Prajapati i/b G.S.Manasawala for the Defendants in support.

...

CORAM: D.K.DESHMUKH, J.

DATED: 3RD MARCH,2006

P.C.:

Though the reasons given in the affidavit for not depositing the amount pursuant to the order dated 17-2-2003 passed by the Court within time can by no stretch of imagination be described as convincing, in view of the fact that the entire decretal amount has admittedly been deposited by the Defendants in the court and the Defendants have no objection to the Plaintiff withdrawing that amount, on filing an undertaking to redeposit the amount and also willingness of the Defendants to pay as and by way of costs of this motion Rs.25,000/- to the Plaintiff, in my opinion, following order would meet the ends of justice.

O R D E R

(i) The decree passed in the suit is set aside.

(ii) Leave to defend is granted to the Defendants.

(iii)Defendants to file their written statement

within a period of twelve weeks from today. This is subject to the condition that the Defendants pay to the Plaintiff as and by way of costs of this Motion Rs.25,000/- within a period of six weeks from today.

(iv) The Plaintiff is permitted to withdraw the amount of Rs.2,41,975/- deposited by the Defendants in this Court on furnishing an undertaking to this court undertaking therein to redeposit the amount, if so directed by this Court on such terms and conditions as may be directed by this Court.

(v) The Prothonotary & Sr.Master shall permit the Plaintiff to withdraw the amount within a period of six weeks from today. In case the amount is not so withdrawn within the period of six weeks, then the amount be invested in fixed deposit in a nationalised bank during the pendency of the suit.

(vi) Motion disposed of.

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